REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-In-Charge City Treasurer's Office of Davao City. Petitioners,	CTA EB No. 1654 (CTA AC No.140)
	Present:
- versus -	DEL ROSARIO, PJ CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, JJ.
ROXAS SHARES, INC., Respondent.	Promulgated: MAR 26 2019 11:45 a.m.

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RESOLUTION

Fabon-Victorino, J:

For Court action is petitioners' *Motion for Reconsideration*[1] dated October 17, 2018, challenging the Decision of September 17, 2018,[2] disposing the case as follows:

> **WHEREFORE**, the Petition for Review dated May 9, 2017 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED**.

Petitioners maintain that respondent's primary purpose in its Amended Articles of Incorporation (AOI), as well as its

[1] *Rollo*, pp. 131-143.
[2] Ibid. at pp. 97-116.

declaration that it receives interest and dividends as a consequence of placing funds in securities and banks show that it is a Non-Bank Financial Intermediary (NBFI). As such, respondent is subject to local business tax (LBT) under Section 143(f) of the Local Government Code (LGC).

They further claim that a corresponding authority from the Monetary Board of the *Bangko Sentral ng Pilipinas* (MB-BSP) is insignificant to be regarded as a NBFI since respondent's alleged act of regularly placing monies on San Miguel Corporation (SMC) Shares, as well as in banks portrays the business activities of a NBFI.

Also, respondent's substantial outlay in the form of SMC Shares and money market placements from which it receives dividends and interests negates any impression that it does not perform the business endeavours of a NBFI.

Petitioners as well find erroneous the Court's ruling that they are bereft of authority to tax the SMC shares and its earned interests and dividends pursuant to Section 133(o) of the LGC since the SMC shares held by petitioner are owned by the government of the Republic of the Philippines.

According to them, the *COCOFED* case[3] relied upon by the Court finds no application in this case. They claim that the declaration that the subject SMC shares are of public character only means that they are not privately owned by respondent. Neither is the said case law pregnant with a categorical declaration as to the taxability or non-taxability of the said shares. That being the case, the same may not constitute as a binding precedent in the given controversy.

In refutation,[4] respondent retorts that it cannot not be regarded as an NBFI since no proof was adduced by petitioners that it is engaged in placement of funds on a principal and recurring bases. Besides, it is not authorized by the MB-BSP to perform quasi-banking activities. In

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[3] *Philippine Coconut, Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, et al.*, G.R. Nos. 177857-58, January 24, 2012.
[4] Respondent's Comment (On Petitioners' Motion for Reconsideration dated 17 October 2018), *rollo*, pp. 149-173.

addition, it only acquired SMC shares but once and that was after its incorporation, for which reason it is not a business activity, but an isolated transaction. Moreover, mere owning/holding of shares does not automatically render it as an NBFI. And since it was classified by no less than the Supreme Court in the *COCOFED* case as a holding company, and not an NBFI, petitioners are proscribed from imposing local business tax (LBT) on its dividends and interest income emanating from its investments. With the foregoing, it cannot be deemed an NBFI, hence, not subject to LBT under Section 143(f) in relation to Section 133(a) of the LGC.

Finally, on account of the pronouncement of the Supreme Court *En Banc* in the *COCOFED*[5] case that the SMC shares it held are property of the national government, the subject shares, and all their yields are not subject to LBT pursuant to Section 133(o) of the LGC.

THE RULING OF THE COURT

Petitioners' Motion for Reconsideration is devoid of merit.

Obviously, the arguments raised by petitioners merely mimic their previous arguments all of which were already determined and discussed by the Court *En Banc* in the assailed Decision of September 17, 2018. Be that as it may, and only for the purpose of emphasis, the Court will briefly discuss the salient points of the Court's ruling.

Petitioners insist that respondent is an NBFI subject to LBT under Section 143(f) of the LGC. But the latter's Amended AOI reveals that it was organized primarily as a holding company to direct corporate operations by means of stock ownership and not as an NBFI. Also, no evidence exists to demonstrate that respondent's principal and habitual business activity is that of an NBFI pursuant to pertinent laws, rules and regulations promulgated by competent authority. Respondent was also not endowed by the MB-BSP with corresponding authority to perform quasi-banking functions as an NBFI. Summing up the obtaining

[5] See Note 3.

circumstances, respondent cannot be deemed or categorized as an NBFI, precisely a nullification of the LBT imposed on the dividends received from its SMC Shares, and interest yield on its market placements.

Even granting *arguendo* that respondent is a NBFI as petitioners suggest, the subject SMC shares, along with the dividend and interest realized therefrom are owned by the Republic of the Philippines as declared in the *COCOFED*[6] case. Under Article 440 of the Civil Code,[7] the right to the fruits of the property legally pertains to the owner thereof. This proceeds from the principle of accession whereby the accessory follows the principal.[8] Given that respondent's SMC preferred shares are owned by the Philippine government, all the *fruges civile* ensuing therefrom, i.e., dividends and interests from money market placements are owned by the government as well, hence, beyond the ambit of petitioners' taxing power under Section 133(o) of the LGC.

Jurisprudence has it that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[9] Hence, this Court cannot decide on the matter in any other way.

WHEREFORE, petitioners' Motion for Reconsideration dated October 17, 2018 is **DENIED**, for lack of merit. The Decision of September 17, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[6] See Note 3.

[7] **Article 440.** The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

[8] See *Briones vs. Macabagdal,* G.R. No. 150666, August 3, 2010; and *Heirs of Limense vs. Vda. De Ramos,* G.R. No. 152319, October 28, 2009.

[9] *Commissioner of Internal Revenue vs. Michel J. Lhullier Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(With due respect, I reiterate my Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice